

UNITED STATES OF AMERICA,) 3:13-cr-00011-HDM-WGC
) 3:14-cv-00650-HDM
Plaintiff,)
)
vs.) ORDER
)
BYRON TRENT DAVIS,)
)
Defendant.)
)

On December 9, 2014, defendant filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The motion raised a number of ineffective assistance of counsel claims directed at defendant's former counsel, Mary Boetsch. On January 20, 2015, the court granted the government's motion for order deeming the attorney-client privilege waived and directed Boetsch to provide the government with an affidavit responsive to defendant's allegations.

1 On March 19, 2015, Boetsch's affidavit was filed along with
2 the government's response to defendant's petition. On May 27,
3 2015, defendant filed an application to strike Boetsch's affidavit.
4 On October 16, 2015, the court denied the majority of defendant's
5 arguments - many of which had been denied before - but reserved on
6 ruling on any objections defendant had to specific lines of the
7 affidavit. The court directed the defendant to file a supplement
8 identifying "each line or paragraph that he believes is beyond the
9 permissible scope of the waiver of his privilege." (Doc. #87).

10 Defendant's supplement filed November 23, 2015, identifies a
11 number of specific lines and paragraphs that he argues should be
12 stricken. The objections are largely without merit. Most of
13 Boetsch's affidavit responds to defendant's claims of ineffective
14 assistance of counsel. Many of the statements relate directly to
15 claims defendant has made; others relate indirectly but explain the
16 strategy underlying those decisions of Boetsch's that defendant
17 challenges. There is no basis for striking any such statements.
18 However, a handful of statements are in fact either irrelevant or
19 unnecessary to respond to defendant's motion, and as to those
20 statements the defendant's objections are sustained. Those
21 statements are:

- 22 • Page 3:21-24: Beginning "We viewed a portion. . . ." and
23 ending with "We did not view that portion."
- 24 • Page 5:17-6:6: Beginning "Mr. Davis was the sole provider
25" and ending "he attended the classes."
- 26 • Page 7:5-9: Beginning "Due to the nature" and
27 ending "prior to telling his wife."
- 28 • Page 8:3-5: Beginning "After Mr. Davis was sentenced . . .

1 .” and ending “now had to pay.”

2 The defendant’s application to strike (#75, #90) is therefore
3 **GRANTED IN PART**, and the lines of Boetsch’s affidavit set forth
4 above are hereby **STRICKEN** from her affidavit.

5 IT IS SO ORDERED.

6 DATED: This 2nd day of May, 2016.

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8 UNITED STATES DISTRICT JUDGE
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